

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IAN S. PHILLIPS,

Plaintiff,

V.

MERRILL LYNCH PIERCE FENNER,
& SMITH INCORPORATED,

Defendant.

C.A. No. 05-742 (SLR)

JURY TRIAL DEMANDED

**DEFENDANT'S MOTION TO DISMISS PURSUANT TO RULE 12(b)(6),
OR TRANSFER VENUE PURSUANT TO 28 U.S.C.A. § 1404(a)**

Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), hereby moves to dismiss the Complaint filed in the above-captioned action pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, moves to transfer this case to the District of Connecticut, pursuant to 28 U.S.C.A. § 1404(a). As grounds for this motion, Merrill Lynch refers to its Opening Brief and Affidavit of Judy Monaghan, filed contemporaneously herewith.

DUANE MORRIS LLP

/s/ Daniel V. Folt

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Dated: December 29, 2005

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CERTIFICATE OF SERVICE

I, Gary W. Lipkin, hereby certify that on December 29, 2005, I caused to be served a copy of "Defendant's Motion To Dismiss Pursuant To Rule 12(b)(6), Or Transfer Venue Pursuant To 28 U.S.C.A. § 1404(a)" on the following counsel of record via e-filing:

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/s/ Gary W. Lipkin (DE Bar I.D. No. 4044)